



April 18, 2000

Mr. Wyman Hopkins  
Administrative Sergeant  
Office of the Chief of Police  
City of Rosenberg  
2120 Fourth Street  
Rosenberg, Texas 77471

OR2000-1541

Dear Mr. Hopkins

You ask whether certain information is subject to required public disclosure under chapter 552 of the Texas Government Code. Your request was assigned ID# 134478.

The Rosenberg Police Department (the "department ") received a request for a specific incident report. You seek to withhold portions of the incident report from disclosure under sections 552.108 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the information at issue.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. In this instance, you state that "[t]he respective case . . . investigation has been concluded, but has not been adjudicated and therefore has not

resulted in a conviction or deferred adjudication against any person.”<sup>1</sup> Our review of the submitted report reveals that the investigation has indeed concluded and the case was not adjudicated. Therefore, based on your representations and our review of the report, this office concludes that most of the information at issue may be withheld pursuant to section 552.108(a)(2).

We note, however, that section 552.108 does not except from required public disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); *see also* Open Records Decision No. 127 (1976) (summarizing the types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic front page offense report information, the department may withhold the incident report from disclosure under section 552.108(a)(2). We note that the department has the discretion to release all or part of the offense report that is not otherwise confidential by law. Gov’t Code § 552.007.

Because we are able to make a determination under section 552.108, we need not address your section 552.130 claim. This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

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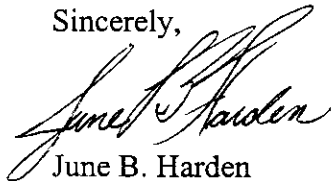
<sup>1</sup>We note that the department should indicate the status of the case in its brief. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how stated exceptions apply to submitted information); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977) (governmental body must explain how section 552.108 applies to submitted information).

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/CHS/ljp

Ref: ID# 134478

Encl. Submitted documents

cc: Ms. Marlene Sulak  
2901 Airport Avenue #111  
Rosenberg, Texas 77471  
(w/o enclosures)